Arbitration Case No.70 of 2007 (O&M).

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Arbitration Case No.70 of 2007 (O&M).

Date of Decision: September 27, 2007.

M/s. Kulbir Singh and Company..... Petitioner through Mr.P.S. Rana, Advocate.

VERSUS

Chief Administrator, Haryana State Agricultural Marketing Board and another .....Respondents through Mr.Durgesh Aggarwal, Advocate.

CORAM :

HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE.

-.-

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition for appointment of an Arbitrator has been filed by the petitioner in terms of the Arbitration Clause 25A of the agreement, which is to the following effect:-

> " *If any question, difference or object whatsoever shall arise in any way connected with or arising out of this instrument at the meaning or operations of any part thereof or the rights duties liabilities of other party then same in so far as the decision of any such matter*

there in before provided for and has been so decided every such matter including whatever according or whether its decision has been otherwise provided for and or whether it has finally divided the contract should be terminated not has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the capable officer to be appointed by the Chief Administrator of the Board within 180 days viz six months from the date of making final payment to the contractor or when the contractor is not willing to receive the payment from the date of registered notice is to him that his final bill is ready for payment and his decision shall be final and binding and where the matter involves a claim for the payment or recovery or deduction of money, only the amount if any awarded in such arbitration shall be recoverable in respect of the matter so referred.

If the matter is not referred to arbitration within specified period, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred."

The petitioner invoked the aforesaid Arbitration Clause vide its letter dated May 05, 2004 (Annexure P-5). The

receipt of the said letter is not denied by the respondents. However, no Arbitrator was appointed by the respondents. The petitioner was constrained to file an Arbitration Petition before the Court of the District Judge, Ambala, on August 12, 2004. Notice of the said petition was issued to the respondents. The respondents put in appearance before the District Judge, Ambala, on October 01, 2004. However, they took time to file reply to the petition, but had not appointed the Arbitrator till then.

The respondents appointed the Arbitrator on November 25, 2004. In the meanwhile, in view of the decision of the apex Court in ***M/s. SBP & Co. Vs. M/s. Patel Engineering Ltd. & Anr., J.T. 2005 (9) SC 219,*** all the Arbitration Petitions pending before the District Judges were transferred to this Court. The District Judge, Ambala, sent this petition to this Court on February 18, 2006. The respondents put in appearance before this Court on March 30, 2007. No reply to the main petition has been filed. However, reply to the application for stay has been filed by the respondents and the plea taken in the said reply is that in the Arbitration Clause 25A of the agreement, no period of thirty days has been prescribed for appointment of the Arbitrator and as the respondent-Board has appointed the Arbitrator within a reasonable time, therefore, the present petition as well as application for stay deserve to be dismissed. Same argument has been advanced by the learned counsel for the respondents before me.

I find no force in the argument of the learned counsel

for the respondents.

It is no more ***res integra*** that after receiving notice of the petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as `the Act') before the District Judge, Ambala, no Arbitrator could be appointed by the respondents. The petition was filed on August 12, 2004 before the said Court. The respondents put in appearance before the Court of the District Judge on October 01, 2004 and an Arbitrator was appointed on November 25, 2004.

Sub-section 4 (a) of Section 11 of the Act provides that if a party fails to appoint an Arbitrator within thirty days from the receipt of a request to do so from the other party, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him. There is no provision in the Act which provides that an Arbitrator can be appointed within a reasonable time.

Since the Arbitrator was not appointed within the stipulated period, the respondents have no right to supply the vacancy in terms of the Arbitration Clause at a stage when the matter is sub judice before the Court.

Learned counsel for the petitioner has relied upon the case of ***Satish Rathi v. State of Haryana and others*** **(**Arbitration Case No.293 of 2006 decided by this Court on April 30, 2007) which was also in relation to similar Arbitration Clause, reproduced above.

Hence, having not appointed the Arbitrator within thirty days of the receipt of notice invoking the Arbitration

Clause, the respondents forfeited their right to supply the vacancy of the Arbitrator.

I, therefore, with the consent of the parties, appoint Mr.P.S. Rawat, a retired Superintending Engineer of the Haryana State Agricultural Marketing Board, Panchkula, as Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

Intimation regarding appointment of Arbitrator in this petition be sent to Mr.P.S. Rawat at his residential address, as supplied by counsel for the petitioner i.e House No.114, Shikhar Apartment, Mansa Devi Complex, Sector 5, Panchkula.

The parties are directed to appear before the Arbitrator on November 02, 2007.

The petition stands disposed of.

September 27 , 2007.
ak

(VIJENDER JAIN)
CHIEF JUSTICE